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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 STEVEN EARL CARR, an individual,
13
14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA; DAVID
17 N. KARPEL, individually, DOES 1 through
18 100; and ROES 1 through 100; inclusive,
19 Defendants.

CASE NO.: 2:20-cv-1850-GMN-NJK

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND DEMAND
FOR JURY TRIAL**

21
22 COMES NOW Plaintiff STEVEN EARL CARR (“MR. CARR”), by and through his
23 counsel, MELANIE A. HILL of MELANIE HILL LAW PLLC, for his claims of relief
24 against Defendants UNITED STATES OF AMERICA, DAVID N. KARPEL,
25 individually, DOES 1 through 100, and ROES 1 through 100 (collectively
26 “DEFENDANTS”), and each of them, jointly and severally, based upon knowledge,
27 information, and reasonable belief derived therefrom, allege, complain, and state as
28 follows in this Second Amended Complaint:

JURISDICTION AND VENUE

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1. This action seeks damages for violations of MR. CARR’S civil rights raising constitutional claims under the Fifth and Eighth Amendments to the United States Constitution pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and under the Federal Tort Claims Act (“FTCA”). This Court has subject matter jurisdiction over Defendant UNITED STATES OF AMERICA (“UNITED STATES”) on behalf of its federal employees under 28 U.S.C. § 134(b), 2671 et seq., which vests exclusive subject matter jurisdiction of FTCA litigation in the United States District Court. Liability of Defendant UNITED STATES and this Court’s jurisdiction over it is predicated specifically on 28 U.S.C. §§ 1346(b)(1) and 2674 because injuries, harms, and damages that form the basis of this complaint were proximately caused by the negligence, wrongful acts and/or omissions of employees of the United States through its agencies the United States Department of Justice (“DOJ”), the United States Attorneys’ Office for the District of Nevada (“USAONV”), the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), and/or ROES 1 through 100. This Court has subject matter jurisdiction over the instant FTCA claims and the federal DEFENDANT named herein under 28 U.S.C. §§ 1346 and 2647. Pursuant to 28 U.S.C. § 1346(b), MR. CARR timely and properly submitted a Claim for Damage, Injury or Death to DEFENDANT UNITED STATES and its requisite agencies and, as such, have fully satisfied and exhausted their administrative obligations to present their FTCA claims to the Court.

2. The FTCA, 28 U.S.C. §§ 1346(b), 2671-2680, requires that MR. CARR first exhausts administrative remedies by making a written demand to offending federal agencies before initiating actions against the UNITED STATES and those federal agencies in federal court. The statute gives the agencies six (6) months to respond to the written demand(s).

1 3. MR. CARR hand delivered an Administrative Claim on Standard Form
2 95 to the DOJ, the USAONV, and the ATF Las Vegas Field Office on October 2, 2020
3 and mailed an Administrative Claim on Standard Form 95 to the DOJ in Washington,
4 District of Columbia and the ATF in Washington, District of Columbia for delivery on
5 October 5, 2020 and the six-month period to respond to the Administrative Claim has
6 therefore not yet run on the FTCA claims. However, these FTCA claims are being
7 included in this Second Amended Complaint in order to bring the *Bivens* claims and
8 Nevada state law tort claims within two years of the injury to MR. CARR to preserve
9 the Statute of Limitations on these claims and to allow all claims to be brought within
10 one action under the one action rule as well as for judicial efficiency and judicial
11 economy. MR. CARR understands that his FTCA claims should therefore be stayed
12 pending the expiration of the six-month period of time for the UNITED STATES and
13 the federal agencies to consider and respond to the Administrative Claim. If the
14 UNITED STATES and GOVERNMENT DEFENDANT again move to dismiss the
15 FTCA claims in a subsequent motion to dismiss, MR. CARR will seek a stay in lieu of
16 dismissal of the claims to allow the six-month period to run on or about April 3, 2021.
17 It is important to note that the government agencies typically deny the FTCA claim
18 after a complaint is filed and MR. CARR anticipated that this may have occurred when
19 filing his complaint rendering a request for a stay moot.
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22 4. This Court has supplemental jurisdiction over MR. CARR's causes of
23 action arising under Nevada state law pursuant to 28 U.S.C. § 1367.

24 5. Venue lies in the unofficial Southern Division of the United States
25 District Court for the District of Nevada pursuant to 28 U.S.C. § 1391(a)(1) and 28
26 U.S.C. § 1391(b)(1), (b)(2), and (e)(1) because the underlying acts, omissions, events,
27 injuries and related facts upon which the present action is based occurred in Clark
28 County, Nevada and because the UNITED STATES is a defendant and one or more

1 defendants herein is an officer or employee of the United States.

2 6. The individual defendants and DOES 1 through 100 named herein
3 are/were law enforcement agents and employees of Defendant UNITED STATES.
4 They were acting within the scope of their employment at all times relevant to this
5 complaint. The constitutional violations and tortious conduct at issue in this case
6 involve federal agencies and employees and are therefore ultimately chargeable to the
7 UNITED STATES itself.
8

9 7. These individual defendants are/were agents, servants, and employees of
10 each of the other named defendants and were acting at all times within the full course
11 and scope of their agency and employment, with the full knowledge and consent,
12 either express or implied, of their principal and/or employer and each of the other
13 named DEFENDANTS. Each of the DEFENDANTS, DOES 1 through 100, and ROES
14 1 through 100 had approved or ratified the actions of the other DEFENDANTS,
15 thereby making the currently named DEFENDANTS liable for the acts and/or
16 omissions of their agents, servants and/or employees.
17

18 **PARTIES**

19 8. Plaintiff STEVEN EARL CARR (hereinafter “Plaintiff” or “MR. CARR”)
20 is, and at all times herein mentioned was, a United States citizen and a resident of
21 Clark County, Nevada.

22 9. Upon information and belief, Defendant DAVID N. KARPEL
23 (“KARPEL”) is and was at all times relevant to this action a resident of Washington,
24 District of Columbia and a Trial Attorney with the Organized Crime and Gang Section
25 of the United States Department of Justice (“DOJ”). During the relevant time period
26 in this lawsuit, KARPEL was directly responsible for bringing and signing the RICO
27 Indictment against MR. CARR and his twenty-two co-defendants. Upon information
28 and belief, KARPEL is one of the attorneys that presented the evidence and witnesses

1 in the underlying criminal RICO case to the Grand Jury that brought this True Bill
2 against MR. CARR. Upon information and belief, KARPEL was continually and
3 substantially involved in directing the investigation and developing the witness
4 testimony that ultimately led to MR. CARR being charged in the superseding RICO
5 indictment with one overt act being the alleged murder in Sparks, Nevada in *United*
6 *Sates v. Palafox, et. al.*, 2:16-cr-265-GMN-CWH [ECF No. 13]. Specifically, it is
7 alleged that KARPEL met with government witnesses Gary Rudnick, Jefferson
8 Martin, and Scott Rivera multiple times prior to these witnesses testifying before the
9 grand jury on June 7, 2017 to provide testimony that was ultimately used to indict
10 CARR in the District of Nevada. Upon information and belief, a RICO indictment
11 could not be brought by the USAONV without approval from the DOJ due to DOJ
12 policy. KARPEL is being sued in his individual capacity.

14 10. Defendant UNITED STATES OF AMERICA (“UNITED STATES”) is the
15 national federal government established by the United States Constitution.
16 Accordingly, it is subject to limitations imposed by the Constitution – including as
17 relevant here, the Fifth and Eighth Amendments. The United States is the appropriate
18 defendant for MR. CARR’S claims herein under the Federal Tort Claims Act (“FTCA”)
19 and was at all times relevant to this action, the employer of KARPEL and DOES 1
20 through 100. The UNITED STATES, through its various agencies (e.g., the DOJ,
21 USAONV, and ATF described more specifically below) and employees (i.e.,
22 Defendants KARPEL and DOES 1 through 100) – each of whom, for purposes of MR.
23 CARR’S FTCA claims, was acting within his/her official capacity and within the scope
24 and course of her/his employment with the applicable federal agency – caused acts
25 and events to occur within this forum from which MR. CARR’S claims arose.

27 A. The DOJ is, and at all material times was, an Executive Department and
28 agency of Defendant UNITED STATES; responsible for the enforcement

1 of law and the administration of justice within the United States and
2 doing business in this District; the administrator of several law
3 enforcement agencies and offices, including, without limitation, the
4 USAONV, ATF, and ROES 1 through 100; and an employer of Defendants
5 KARPEL and DOES 1 through 100.
6

7 B. The ATF is, and at all material times was, the investigative arm of
8 Defendant UNITED STATES, the DOJ, and the USAONV; doing business
9 in this District; and an employer of DOES 1 through 100.

10 11. Defendants KARPEL and DOES 1 through 100 shall hereinafter
11 collectively be referred to as the “GOVERNMENT DEFENDANTS.”

12 12. Upon information and belief, Defendants identified as DOES 1 through
13 100 and ROES 1 through 100, whether individual, corporate, associate, governmental
14 or otherwise, caused acts and events to occur within this forum from which MR.
15 CARR’S claims arose. The true names and capacities of these parties is not currently
16 known by MR. CARR, and once such identities become known, MR. CARR will seek
17 leave of Court to amend his Complaint accordingly.
18

19 **STATEMENT OF FACTS**

20 13. On June 14, 2017, MR. CARR was indicted and maliciously prosecuted
21 by way of a Superseding Indictment for one count of conspiracy to participate in a
22 racketeering enterprise in violation of Title 18 U.S.C. 1962(d) with the RICO
23 enterprise identified as the “Vagos Outlaw Motorcycle Gang” in the RICO Indictment.
24 This accusation is part of a forty-four (44) page Superseding Indictment charging MR.
25 CARR and twenty-two (22) other Co-Defendants named in the Superseding
26 Indictment in Count One with the racketeering conspiracy and charging MR. CARR’S
27 co-Defendants in a number of other allegedly related specific offenses. The incidents
28 related to the alleged racketeering conspiracy are alleged to have begun in 2005 and

1 continued throughout the date of the Sealed Superseding Criminal Indictment, June
2 14, 2017 (hereinafter “RICO Conspiracy case”).

3 14. MR. CARR was indicted after the United States Attorneys' Office for the
4 District of Nevada (“USAONV”) entered into a plea agreement with MR. CARR in a
5 prior conspiracy case related to his Vagos affiliation, *United States v. Kane, et. al.*,
6 Case Number 2:13-cr-250-JAD-VCF (D. Nev.) (hereinafter “Original Conspiracy
7 case”), on July 8, 2016 promising not to bring additional charges against him except
8 for a crime of violence under Title 18, United States Code, Section 16 (“section 16”).
9 Plea Agreement [ECF No. 217 in 2:13-cr-250-JAD-VCF (D. Nev.)], pp. 2-3.

10 15. Importantly, all eight of the overt acts listed in the RICO Conspiracy
11 which name MR. CARR are alleged to have occurred before June 25, 2013, when the
12 grand jury returned the indictment against MR. CARR in the Original Conspiracy
13 case.
14

15 16. It is also important to note that in MR. CARR’S Original Conspiracy case,
16 one defendant was dismissed entirely, most of the others received pretrial diversion
17 and the remaining defendant, Robert Alan Coleman was dismissed from the Original
18 Conspiracy case after he was reindicted in the RICO Conspiracy case.
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20 17. Upon information and belief, the UNITED STATES had witness issues in
21 the Original Conspiracy case that resulted in the offers for pretrial diversion that were
22 given to MR. CARR’S co-defendants in the Original Conspiracy case and the UNITED
23 STATES knew of these issues prior to reindicting MR. CARR and Mr. Coleman in the
24 RICO Conspiracy case.

25 18. In fact, one of the overt acts is the Original Conspiracy, and three of the
26 other seven overt acts relate directly to the Original Conspiracy and involve the same
27 alleged victim. In the remaining four overt acts, the indictment accuses MR. CARR
28 only of minor conduct, occurring years before.

1 19. As this Court knows, and as was displayed throughout the trial for the
2 first trial group in the RICO Conspiracy case, the Government knowingly elicited
3 testimony from witnesses who have not only issues with being honest, but are
4 admitted liars willing to repeatedly lie under oath. As will be illustrated herein, the
5 UNITED STATES' Superseding Indictment against MR. CARR (and his co-
6 Defendants in the RICO Conspiracy case) is not valid as it is based on lies. It is
7 irreparably tainted. The government cannot "fix" the Indictment in the RICO
8 Conspiracy case.
9

10 20. When the shooting death of Jethro Pettigrew was tried in Reno state
11 court, Gary Rudnick testified at the trial against Ernesto Gonzalez. Mr. Rudnick
12 testified and provided a different account of who was allegedly at the meeting prior to
13 when the shooting occurred and where the official meeting occurred. Mr. Gonzalez
14 was convicted at trial, but the case was later reversed on appeal by the Nevada
15 Supreme Court. The Nevada Supreme Court stated that there was no collaborating
16 evidence that a conspiracy to commit murder occurred at the Nugget casino. This
17 case was never retried in Reno, but was instead included as a VICAR count and as an
18 overt act in the RICO Superseding Indictment that ultimately resulted in acquittals of
19 all defendants in the Group No. 1 after trial.
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21 21. Upon information and belief, in or around 2015 KARPEL began working
22 on this RICO investigation of the Vagos Motorcycle Club which included this 2011
23 Nugget shooting.

24 22. On June 10, 2015, Mr. Rudnick met with KARPEL and case agents for
25 the first time while Mr. Rudnick was in state custody for his involvement in the Nugget
26 shooting.

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1 23. On April 1, 2015, Mr. Martin was interviewed by case agents for the first
2 time and stated there was a conspiracy. On April 29, 2015, Mr. Martin met with
3 KARPEL and case agents and reaffirmed the alleged conspiracy.

4 24. On February 10, 2016, KARPEL, with case agents, met with Mr. Rudnick
5 and Mr. Rudnick provided names of some of the Vagos members that were allegedly
6 in attendance at the meeting when the purported order was given to murder Mr.
7 Pettigrew.
8

9 25. Upon information and belief, Mr. Rudnick provided names and then was
10 asked if he remembered Mr. Martin being present at the alleged meeting.

11 26. Upon information and belief, Mr. Rudnick affirmed Mr. Martin's
12 presence at the meeting after being prompted by KARPEL and case agents.

13 27. Upon information and belief, Mr. Rudnick stated the side meeting
14 occurred just outside the conference room where there was a larger all-member
15 meeting.
16

17 28. Upon information and belief, on March 17, 2016, Mr. Rudnick sat down
18 with Ernesto Gonzalez's defense investigator April Higuera and recanted his previous
19 statements and stated that there was not a conspiracy to murder Mr. Pettigrew and it
20 was a bar fight that went bad.

21 29. Upon information and belief, on May 26, 2016 KARPEL and case agents
22 interviewed Mr. Rudnick again at the halfway house and offered assistance for
23 housing through the Department of Homeland Security.

24 30. Upon information and belief, on June 3, 2016, case agents had contact
25 with Jill Dunaway, a friend of Mr. Rudnick, on behalf of Mr. Rudnick who stated that
26 Mr. Rudnick had contact with defense counsel and investigator for Ernesto Gonzalez.

27 31. Upon information and belief, on March 18, 2017, KARPEL was notified
28 of the recantation of Mr. Rudnick and a task force officer, Peter Grimm talked with

1 Mr. Rudnick and was then told a different story by Mr. Rudnick that Mr. Rudnick lied
2 to defense counsel and there was a conspiracy to murder Mr. Pettigrew.

3 32. Mr. Rudnick testified before the Grand Jury and Trial Jury for the first
4 trial group. When he testified at trial, he committed perjury, contradicted himself, and
5 admitted to making false statements numerous times. More importantly, Rudnick
6 testified at trial repeatedly to items that were inconsistent with the sworn testimony
7 the UNITED STATES used to obtain the Superseding Indictment in the RICO
8 Conspiracy case when he testified before the Grand Jury on June 7, 2017.

9 33. Jefferson "Lunchbox" Martin testified before the Grand Jury and the
10 Trial Jury in the trial of group No. 1. He committed perjury, contradicted himself, and
11 admitted to making false statements a multitude of times. These lies included
12 numerous lies to the Grand Jury which were used to obtain the Superseding
13 Indictment in the RICO Conspiracy case. Like Mr. Rudnick, Mr. Martin was also
14 appointed a lawyer, Richard Wright, by this Court. Trial Transcript, October 2, 2019,
15 p. 112. Mr. Martin was under the impression, up until he was appointed a lawyer on
16 September 21, 2019, that he was safe from being prosecuted. Trial Transcript, October
17 2, 2019, p. 116-118.

18 34. Upon information and belief, the UNITED STATES has conceded Mr.
19 Rudnick's false allegations and Mr. Martin's false allegations were presented to the
20 Grand Jury. These allegations were material, as they serve as underpinnings to
21 obtaining the Superseding Indictment in the RICO Conspiracy case.

22 35. At the trial of group No. 1, Mr. Rudnick testified about KARPEL'S
23 involvement in directing the investigation of the RICO murder and developing the
24 testimony that would ultimately be presented to the Grand Jury to ensure the
25 Superseding Indictment would be secured as follows:

26 Q. And there you are in front of a Grand Jury in Santa Anna,
27
28

1 California, with David Karpel.

2 A. Yes, I was.

3 Q. David Karpel was the prosecutor who was part of this team,
4 right?

5 A. Yes, he was.

6 Q. And you met with David Karpel on many occasions, didn't you?

7 A. Couple times, yes.

8 Q. You met with David Karpel after you told April Higurea that
9 you were going to do the right thing.

10 A. One second.

11 (Witness conferring with counsel.)

12 THE WITNESS: Okay. Can you go ahead and ask the
13 question.

14 BY MS. BLISS:

15 Q. My question, I will repeat for you, sir, was: You met with
16 David Karpel after you told April Higurea that you were going to
17 do the right thing.

18 A. I'm going to take the Fifth on that.

19 Q. Okay. And after you met with David Karpel, you testified in
20 front of a Federal Grand Jury?

21 A. I'm going to take the Fifth.

22 Q. David Karpel was angry at you, wasn't he, for talking to
23 April Higurea?

24 A. One second. Let me ask her a question.

25 (Witness conferring with counsel.)

26 THE WITNESS: Okay. Repeat the question.

27 BY MS. BLISS:

28 Q. David Karpel was angry at you for talking to April Higurea
and telling her that you wanted to do the right thing, wasn't
he?

A. He was mad, yes.

Group No. 1 Trial Transcript, September 24, 2019 testimony of witness Gary Rudnick,
p. 25-81, l. 4-p. 25-82, l. 10.

36. During Mr. Rudnick's testimony at the trial for Group No. 1 on
September 23, 2019, he testifies that KARPEL was in multiple meetings about the
alleged meeting at the Nugget casino in which Mr. Rudnick provided an inconsistent
statement about the individuals present at the meeting. *See generally* Group No. 1
Trial Transcript, September 23, 2019 testimony of witness Gary Rudnick, p. 65.

1 37. Out of the presence of the jury, the defense counsel raised the fact that
2 they received a disclosure from the Government that Mr. Martin lied before the Grand
3 Jury because he felt pressure from KARPEL to make up the side meeting and Mr.
4 Martin fabricated the list of people that were alleged to be in the side meeting. Based
5 on this argument by defense counsel, the court allowed the questioning of Mr.
6 Rudnick regarding if he also had issues with KARPEL pressuring him. *See generally*
7 Group No. 1 Trial Transcript, September 24, 2019 testimony of witness Gary Rudnick,
8 pp. 6-18.

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10 38. During Mr. Rudnick's testimony at the trial for Group No. 1 on
11 September 24, 2019, Dan Hill questions Mr. Rudnick about the multiple statements
12 he has made over the years regarding a side meeting and pushes Mr. Rudnick on
13 providing conflicting stories regarding certain member participants during his
14 meetings with KARPEL prior to testifying before the Grand Jury in California. *See*
15 *generally* Group No. 1 Trial Transcript, September 24, 2019 testimony of witness Gary
16 Rudnick, pp. 86-92.

17 39. Upon information and belief, these meetings between Mr. Rudnick and
18 KARPEL occurred on June 10, 2015, February 10, 2016, and May 26, 2016.

19 40. At the trial of group No. 1, Mr. Martin testified about KARPEL'S
20 involvement in directing the investigation of the RICO murder and developing the
21 testimony that would ultimately be presented to the Grand Jury to ensure the
22 Superseding Indictment would be secured as follows:

23
24 Q. Okay. I just want to go back, because I know this has been
25 a long period of time, but do -- you recall that your first
26 meeting with Mr. Karpel was April 29th, 2015, in Santa Ana?
27 A. I could -- yeah. I don't remember the date, but I remember
28 meeting with him.

 Q. Okay. Well, it was a pretty -- it was a pretty significant
event, wasn't it? Because you called Agent Neal the next day

1 and expressed to him that you were worried that the lawyer was
2 mad with you.

A. Correct.

3 Q. And, so, my question is, what happened during that first
4 meeting with Mr. Karpel that caused you to feel the next day
5 that you needed to reach out to Agent Neal and say, look, what
6 did I do wrong, I feel like he's mad with him?

A. Because it's the government. I'm scared of the government.
7 Like, if I said something wrong, I didn't know if I was going
8 to jail or not. I didn't know what going on.

Q. Okay.

A. Like, again, I didn't have a lawyer or anything at the
9 time.

10 Q. Did you feel like, at that first meeting, that things that
11 you were telling Mr. Karpel were things that he didn't want to
12 hear?

A. I felt he didn't believe me.

13 Q. Was there something he did -- I mean, can you articulate
14 something that he did that made you feel that way?

A. I -- just scary little man.

Q. I'm sorry?

15 A. Scary little man. A scary little man, you know?

16 Q. Oh. Well, was he -- was it because he got fired up and
17 pounded the table?

A. He got fired up. He's just -- you know, he's -- I can't
18 explain it because it's so long ago. You know, I was scared,
19 you know.

Q. So it was his demeanor during the meeting that caused you
20 to be alarmed?

A. Well, yeah.

21 Q. Okay. Did -- did he -- and you say he got fired up. Did
22 he get angry?

A. I -- I don't know his demeanor when he gets angry. Alls I
23 know he was -- it was just a scary situation for me.

Q. Did he get loud?

A. Well, of course. He's a lawyer.

Q. Did he get in your face?

A. He sat right across from me.

Q. Did he make gestures that made him -- that made you think
27 that he didn't buy your -- what you were saying?

28 A. Ma'am, I know you're looking for direct answers but here's
the truth, the man scared me, he's the government, okay?

1 You're trying to get feelings from me from back then and I
2 don't know what to tell you, you know.

3 Q. Did he -- did he at any point in time, between that day
4 when you first met him back in April of 2015 and a week ago
5 Sunday, offer to get you legal representation?

6 A. No.

7 Q. During your meetings with him, did he tell you that you
8 were lying?

9 A. I don't -- I don't recall that. I don't remember.

10 Q. During the meetings that you had with Mr. Karpel and
11 members of the federal government, were you told about evidence
12 that they claimed to have that they thought incriminated you?

13 A. No.

14 Q. Were you told about conversations that Mr. Karpel or other
15 members of the federal government had had with other people
16 about the Vagos or what went on at the Nugget on
17 September 23rd, 2011?

18 A. No.

19 Q. Were you shown documents that purported to be other
20 people's statements to law enforcement?

21 A. No.

22 Q. Were you ever shown what appeared to be, you know,
23 transcripts of court testimony?

24 A. No.

25 Q. Were you ever encouraged to speak to somebody else that was
26 assisting the federal government?

27 A. I don't understand the question.

28 Q. Well, during the course of your meetings with Mr. Karpel
and members of federal law enforcement, you became aware that
there were people who were cooperating and providing the
federal government with information, didn't you?

A. Yeah. I heard something like that. There was other
witnesses. That's all I know.

Q. Okay. And that's something that Mr. Karpel and the members
of law enforcement that you met with told you?

A. No. Karpel was trying to get the answers from me.

Q. Okay. Did anybody ever encourage you to try to meet with
any of these other people that were helping the federal
government?

A. No. Excuse me.

Q. Did anybody from the federal government ever tell you that
Mr. Karpel was unhappy with your statements?

1 A. Not to my knowledge.

2 Q. Is it fair to say -- I think you described for us that your
3 first meeting with Mr. Karpel, you were intimidated by him,
4 both because of his position and his demeanor?

5 A. Correct.

6 Q. And the circumstances of the encounter?

7 A. Correct.

8 Q. Did that continue throughout every subsequent meeting you
9 had with Mr. Karpel?

10 A. I was always nervous to see that man.

11 Q. And did you feel pressure to try to please him?

12 A. Yes.

13 Q. Okay. And, specifically, the pressure to try to please him
14 was to tell him a version of events that he wanted to hear?

15 A. I -- yeah.

16 Q. And because of the pressure that you felt, did you change
17 your story about what happened at the Nugget on September 23rd,
18 2011?

19 A. Yes.

20 Q. And I just want to talk about some specific areas, where
21 your -- where your story about the events changed because of
22 that pressure. Specifically, did you change your story as to
23 whether the killing of Jethro Pettigrew was a planned hit?

24 A. Yes.

25 Q. Okay. Did you change your story as to whether or not the
26 Vagos international leadership had issued a green light to kill
27 Pettigrew?

28 A. Yes.

Q. Did you change your story as to whether you participated in
some sort of side meeting after the meeting at the Nugget on
September 23rd, 2011?

A. No.

Q. Okay. Specifically, I want to talk to you about -- and I'm
just going to -- I want to talk to you about this one
particular issue. On April 29th, 2015, when you spoke with
Mr. Karpel and members of federal law enforcement, did you --
did you tell them that you might have observed a side meeting
but that you were not a participant in it?

A. I told them I was out there saying hi to the brothers and
stuff.

Q. Okay.

A. I was out there -- I don't know what you called a meeting.

1 Everybody was out there.

2 Q. Okay. Well, one of the topics that repeatedly comes up in
3 your interviews with federal law enforcement is whether or not
4 there was a side meeting after the all members meeting that
5 night.

6 A. I don't --

7 Q. Right?

8 A. I don't think -- I don't -- I don't think it was a side
9 meeting.

10 Q. Okay. So, let me move forward and I'll circle back to
11 this.

12 Did you change -- as a result of the pressure that you
13 felt, did you change your story about who attended a side
14 meeting?

15 A. I got the -- yes.

16 Q. And did you also change your story about what was
17 supposedly said at this "side meeting"?

18 A. No.

19 Q. As a result of the pressure that you felt, did you change
20 your story as to whether or not Jeff Voll asked you to lie
21 about the green light -- a green light at the trial in Reno?

22 A. Yes.

23 Q. And did you change your story about whether it was the
24 Vagos that sent you up to Reno to lie?

25 A. Yes.

26 Q. And did you change your story about David Houston, who was
27 Ernesto Gonzalez's attorney in Reno, did you change your story
28 about whether he provided you a script of how to lie at the
trial?

A. Yes.

Q. And did you also change your story about whether the
international leadership issued an order to kill
Bradley Campos?

A. Excuse me?

Q. Subsequent -- the -- let me see if I can orient you because
I may have just jumped too far. After the situation happened
at the Nugget, Rudnick was kicked out of the Vagos; right?

A. Yes.

Q. And there were some discussions between you and Mr. Karpel
and members of federal law enforcement having to do with the
fact that Bradley Campos didn't act quick enough to kick
Rudnick out or was supporting Rudnick in some manner.

1 Do you recall those discussions?

2 A. Correct.

3 Q. Okay. And -- and at least during some of your meetings
4 with federal law enforcement, you said that there was a
5 decision from the international leadership of the Vagos to put
6 a green light on Campos and kill him.

7 A. We were told to handle him. I don't. . . know killing.

8 Q. Okay. So my question is, is that something that you
9 changed your story on as a result of the pressure you felt --

10 A. Yes.

11 Q. -- through Karpel?

12 The answer is yes?

13 A. Yes.

14 Q. Okay. Thank you. I'm sorry. I just don't think it made
15 it to the record.

16 Group No. 1 Trial Transcript, October 2, 2019 (PM) testimony of witness Jefferson
17 Martin, p. 135, l. 21-p. 143, l. 10.

18 41. During Mr. Martin's testimony at the trial for Group No. 1 on October 9,
19 2019, he testifies that he was threatened by KARPEL and was scared of KARPEL
20 because KARPEL was mad at him and Mr. Martin therefore provided false testimony
21 to make KARPEL happy. *See generally* Group No. 1 Trial Transcript, October 9, 2019
22 (AM) testimony of witness Jefferson Martin, pp. 27-47. Mr. Martin further testified
23 that morning that he was influenced by the power that KARPEL had over him and
24 KARPEL'S insistence that KARPEL wanted to hear Mr. Martin say that a "greenlight"
25 was ordered and Mr. Martin lied due to KARPEL's influence over him and KARPEL's
26 desire to secure the Superseding Indictment. *See generally* Group No. 1 Trial
27 Transcript, October 9, 2019 (AM) testimony of witness Jefferson Martin, pp. 86-105.

28 42. Upon information and belief, these meetings between Mr. Martin and
KARPEL occurred on April 29, 2015 and May 10, 2016.

43. Upon information and belief, meetings also took place between Scott
Rivera and KARPEL on May 10, 2016 and March 14, 2017.

1 44. Mr. Rudnick, Mr. Martin, and Mr. Rivera testified before the grand jury
2 on June 7, 2017 to provide testimony that was ultimately used to indict CARR and
3 others in the Superseding RICO Indictment in the District of Nevada.

4 45. When the DOJ and USAONV brought the RICO Superseding Indictment
5 against MR. CARR, the DEFENDANTS knew or should have known that the Grand
6 Jury testimony was fabricated in large part by the pressure exerted by KARPEL on
7 witnesses Mr. Rudnick and Mr. Martin to fabricate evidence as testified by these
8 witnesses at the trial for Group No. 1. *See infra*.

9 46. When the DOJ and USAONV brought the RICO Superseding Indictment
10 against MR. CARR, the DEFENDANTS knew or should have known that UNITED
11 STATES had promised and agreed in the Plea Agreement they signed and entered into
12 with MR. CARR in the *Kane* case on July 8, 2016 not to bring additional charges
13 against MR. CARR except for a crime of violence under Section 16, knew or should
14 have known that the RICO Conspiracy was not a crime of violence under section 16,
15 and consciously decided to name MR. CARR in the RICO Indictment and direct the
16 marshals to arrest him upon his release from the Bureau of Prisons in the *Kane* case
17 in the Central District of California.

18 47. With credit for good time, MR. CARR completed his sentence for the
19 Original Conspiracy case on or about July 5, 2017. The same day MR. CARR was
20 released from Bureau of Prisons' custody, the marshals arrested him for the RICO
21 Conspiracy case.

22 48. MR. CARR had a detention hearing in the Central District of California
23 on or about July 7, 2017 and MR. CARR was detained pending trial.

24 49. MR. CARR had a subsequent initial appearance and detention hearing in
25 the District of Nevada on July 27, 2017 and the Court, finding from the record that the
26 defendant had a detention hearing at the time of his arrest in the Central District of
27
28

1 California, ordered that detention would continue for MR. CARR pending trial.

2 50. On May 18, 2018, MR. CARR'S counsel in the RICO Conspiracy case filed
3 a motion to dismiss count one of the superseding indictment against him in the RICO
4 Conspiracy case because it violated the plea agreement between MR. CARR and the
5 UNITED STATES in the Original Conspiracy case.
6

7 51. In MR. CARR'S Plea Agreement in the Original Conspiracy case, the
8 UNITED STATES promised it would not prosecute MR. CARR for other offenses
9 arising from the investigation that resulted in the plea agreement and based on
10 conduct known to the UNITED STATES except for a crime of violence under Section
11 16. Through the Plea Agreement, the UNITED STATES only retained the authority to
12 prosecute MR. CARR for an offense that qualified as a crime of violence under
13 section 16. The RICO Conspiracy was not an offense that qualified as a crime of
14 violence under section 16 as successfully argued and alleged in MR. CARR'S motion
15 to dismiss that Judge Hoffman recommended be granted in an R&R filed on
16 September 21, 2018 that resulted in the UNITED STATES dismissing MR. CARR from
17 the RICO Conspiracy case fourteen days after Judge Hoffman filed his R&R.
18

19 52. The RICO Indictment and subsequent prosecution of MR. CARR arose
20 from the Operation Pure Luck investigation, an investigation that resulted in the prior
21 written Plea Agreement and is based on conduct the UNITED STATES knew about
22 before signing that Plea Agreement that was filed in the Original Conspiracy case on
23 July 8, 2016. The charged offense in the RICO Conspiracy case—conspiracy to
24 participate in a racketeering enterprise—is not a crime of violence under section 16,
25 the only crime excluded from the MR. CARR'S Plea Agreement that the UNITED
26 STATES retained the right to bring charges against MR. CARR for. The relevant
27 provision of MR. CARR'S Plea Agreement stated:
28

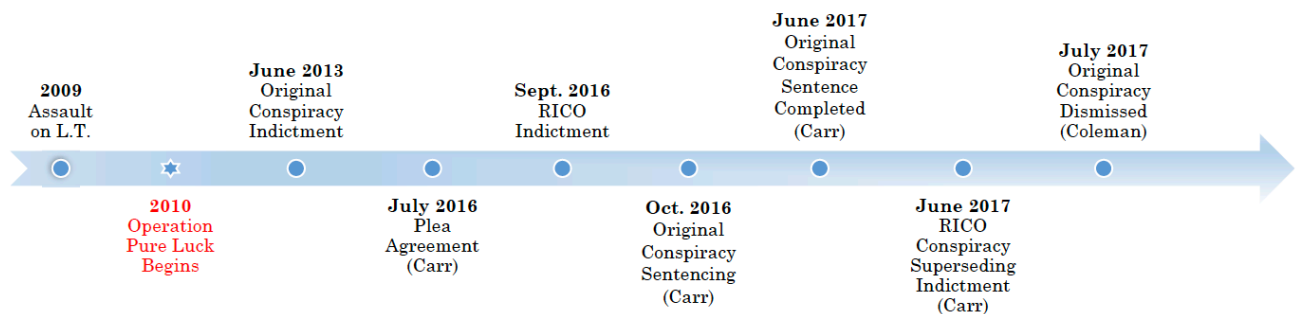
D. Additional Charges. The United States agrees not to bring any

additional charges against the defendant arising out of the investigation in the District of Nevada that culminated in this Plea Agreement and based on conduct known to the United States except that the United States reserves the right to prosecute the defendant for any crime of violence as defined by 18. U.S.C. § 16.

Plea Agreement for Original Conspiracy case, [ECF No. 217 in 2:13-cr-250-JAD-VCF (D. Nev.)], pp. 2-3.

53. MR. CARR was the only defendant who pled guilty and took responsibility in the Original Conspiracy case.

54. The timing of certain events during the two prosecutions is significant. MR. CARR's counsel from the Federal Public Defender's Office in Nevada in both the Original Conspiracy case and RICO Conspiracy case prepared and attached a timeline to assist the Court in both motions to dismiss. The "Operation Pure Luck" Timeline is included here:



2013 Original Conspiracy Indictment Arising from Operation Pure Luck

55. In June 2013, the UNITED STATES sought to indict MR. CARR with one count of conspiracy to interfere with commerce by extortion under Title 18, United States Code, Section 1951(a). Original Conspiracy [ECF No. 1 in 2:13-cr-250-JAD-VCF (D. Nev.)]. The grand jury obliged. The Original Conspiracy indictment charged five other defendants: Robert Coleman, Robert Kane, William Congero, Eric Panter, and Thomas McNamara. *Id.* The indictment alleged the defendants collectively conspired to interfere with commerce by extortion in Nevada in June 2009. *Id.* The

1 indictment also alleged that, in June 2009, the defendants attacked a former member
2 of the Vagos Motorcycle Club, L.T., stole L.T.'s Harley Davidson and personal effects,
3 and attempted to burglarize L.T.'s his home. *Id.*

4
5 56. In July 2016, after years of pretrial litigation, MR. CARR accepted the
6 UNITED STATES' written plea agreement and pled guilty to the Original Conspiracy.
7 Original Conspiracy, [ECF Nos. 216, 217, 272]. In exchange for MR. CARR'S guilty
8 plea and waiver of his trial and appellate rights, the UNITED STATES promised MR.
9 CARR that no additional charges would be brought against him "arising out of the
10 investigation in the District of Nevada that culminated in this Plea Agreement and
11 based on conduct known to the United States except that the United States reserves
12 the right to prosecute the defendant for any crime of violence as defined by 18. U.S.C.
13 § 16." *Id.*

14 ***2016 Rico Indictment Arising from Operation Pure Luck***

15
16 57. In September 2016, the UNITED STATES obtained a new indictment
17 charging five members of the Vagos Motorcycle Club with offenses that allegedly
18 occurred in September 2011. *United States v. Neddenriep, et al.*, 2:16-cr-265-GMN-
19 CWH, ECF No. 1. The indictment was sealed as to all defendants. RICO Conspiracy
20 [ECF Nos. 2-6].

21 58. The UNITED STATES did not initially seek to charge MR. CARR in the
22 new case filed on September 6, 2016.

23 59. In October 2016, MR. CARR was sentenced for the Original Conspiracy.
24 The district court sentenced MR. CARR to 12 months and one day in prison, to be
25 followed by two years of supervised release. Original Conspiracy [ECF Nos. 229, 230,
26 273].

27 60. In June 2017, the UNITED STATES obtained a superseding indictment
28 in the *Neddenriep* case, adding more charges and defendants. The superseding

1 indictment was entitled *United States v. Palafox, et. al.*, 2:16-cr-265-GMN-CWH [ECF
2 No. 13] (“RICO Indictment”). The RICO indictment was also sealed as to all newly
3 added defendants. RICO Conspiracy [ECF Nos. 14-36]. One of the new charges was
4 conspiracy to participate in a racketeering enterprise under 18 U.S.C. § 1962(d), count
5 one. RICO Conspiracy [ECF No. 13], pp. 3-35.
6

7 61. Two of the new defendants charged with the RICO Conspiracy are MR.
8 CARR and Robert Coleman. *Id.* The RICO Conspiracy alleges eight overt acts that
9 include MR. CARR. RICO Conspiracy, [ECF No. 13], pp. 17, 25-26, 29-30 (paragraphs
10 3, 48, 49, 50, 56, 74, 75, and 78). All the alleged acts involving MR. CARR occurred
11 before May 2013, i.e., before the UNITED STATES entered into its written plea
12 agreement with MR. CARR in the Original Conspiracy case. *Id.* at pp. 17, 25, 26 29-
13 30. In fact, one of the overt acts is the Original Conspiracy, *id.* at 17, and three of the
14 other seven overt acts relate directly to the Original Conspiracy and involve the same
15 alleged victim, *id.* at 25 (paragraphs 48-50). In the remaining four overt acts, the
16 indictment accuses MR. CARR only of minor conduct, occurring years before.
17

18 ***MR. CARR Completes his Prison Sentence for the Original Conspiracy
Case and is Immediately Arrested on the RICO Conspiracy Case***

19 62. With credit for good time, MR. CARR completed his sentence for the
20 Original Conspiracy case on July 5, 2017. The same day he was released from Bureau
21 of Prisons custody, the marshals arrested him for the RICO Conspiracy case. RICO
22 Conspiracy case, ECF No. 307. He was detained pending trial. *Id.* at ECF Nos. 311,
23 355.
24

25 63. In July 2017, the UNITED STATES moved to dismiss the Original
26 Conspiracy case against Mr. Coleman. Original Conspiracy case [ECF No. 242]. The
27 UNITED STATES admitted the Court should dismiss the Original Conspiracy case
28

1 against Mr. Coleman because:

2
3 The offense alleged in this indictment is the *same as an overt act* in
4 the RICO conspiracy charge the Defendant is now facing.

5 Original Conspiracy case [ECF No. 242] (emphasis added). The Court also dismissed
6 the Original Conspiracy case against Mr. Coleman. Original Conspiracy case [ECF
7 No. 247].

8 ***The UNITED STATES Violated the Plea Agreement by Charging MR.***
9 ***CARR with the RICO Conspiracy Case***

10 64. In its Plea Agreement, the UNITED STATES assured MR. CARR it would
11 not bring additional charges against him arising from the investigation that
12 culminated in the Original Conspiracy and based on conduct “known to the
13 government” except for a crime of violence under Section 16. Original Conspiracy
14 case [ECF No. 217], pp. 2-3. The UNITED STATES retained only the limited authority
15 to prosecute MR. CARR for any offense that qualified as a crime of violence, as defined
16 by section 16. *Id.*

17 65. The overt acts alleged against MR. CARR in the RICO Conspiracy case
18 did not fall within this limited exception to the prosecution bar. MR. CARR therefore
19 filed a motion to dismiss on May 18, 2018 requesting that the Court enforce his plea
20 agreement and dismiss the RICO Conspiracy case.

21 66. Upon information and belief, an agent with ATF testified before the
22 Grand Jury to secure the RICO Indictment against MR. CARR. MR. CARR believes
23 that material misrepresentations may have been made to the grand jury to secure the
24 Superseding Indictment against him in the RICO Conspiracy case and will seek a
25 Court Order to obtain the grand jury transcripts in discovery in this case to support
26 this allegation.
27
28

The Original and RICO Conspiracies Arose Out of the Same Investigation, and the RICO Conspiracy Case is Based on Conduct Known to the UNITED STATES when it Entered the Plea Agreement

67. The RICO Conspiracy case derived from the UNITED STATES' investigation of the Vagos Motorcycle Club that culminated in MR. CARR's guilty plea to the Original Conspiracy case. Furthermore, all this conduct was known to the UNITED STATES when MR. CARR pled guilty in the Original Conspiracy case.

68. Every overt act involving MR. CARR in the RICO Conspiracy case predates July 2016—the date the UNITED STATES and MR. CARR signed the Original Conspiracy plea agreement. RICO Conspiracy case [ECF No. 13], pp. 17, 25, 26, 29-30. Only six of the 103 alleged overt acts occurred after July 2016. RICO Conspiracy [ECF No. 13], pp. 33-34 (¶¶ 97-98, 100-103).

69. Furthermore, the UNITED STATES gathered evidence for the Original Conspiracy case and the RICO Conspiracy case during the same investigation that began before July 2016. ATF was the investigative agency and upon information and belief an agent with ATF testified before the grand jury to secure MR. CARR's Indictment in the RICO Conspiracy case.

70. As early as April 2010, a joint task force of federal and state officers began investigating the Clark County Vagos Motorcycle Club. Task force officers named the investigation "Operation Pure Luck." *Id.*

71. To carry out Operation Pure Luck, officers used a confidential informant. *Id.* The task force also used an undercover task force officer to gather information. *Id.* The undercover officer infiltrated the club around August 2011 and became a full member in July 2012. *Id.*

72. As part of the investigation, the undercover purchased guns, drugs, and stolen motorcycles from other Vagos members. *Id.* The undercover also recorded

1 alleged violent crimes. *Id.* This officer remained undercover until at least June 2013.
2 *Id.*

3 73. Most obviously showing these cases arise from the same investigation
4 and the UNITED STATES' knowledge, the UNITED STATES alleged in RICO
5 Conspiracy overt act Paragraph 3 that MR. CARR committed the Original Conspiracy
6 to extort L.T. RICO Conspiracy case [ECF No. 13], p. 17; Original Conspiracy case
7 [ECF Nos. 1, 216, 217, 272].
8

9 74. The UNITED STATES' evidence for the Original Conspiracy case and the
10 RICO Conspiracy case arose out of the same Operation Pure Luck Investigation.
11 Discovery from the Original Conspiracy case and the RICO Conspiracy case further
12 demonstrates the same investigation and the UNITED STATES' knowledge for the
13 remaining overt acts involving MR. CARR. Not only did the UNITED STATES use
14 surveillance cameras to record most of MR. CARR'S alleged conduct, an undercover
15 officer observed most of the conduct.
16

17 75. This fact formed the basis for MR. CARR'S argument in his motion to
18 dismiss that the UNITED STATES could not claim that it was unaware of the conduct
19 for which he was indicted in the Original Conspiracy case. He further argued that this
20 was especially true because the same Assistant United States Attorney ("AUSA") who
21 prosecuted and indicted the Original Conspiracy case was one of the AUSAs that
22 indicted and prosecuted the RICO Conspiracy case.

23 76. MR. CARR successfully argued in his motion to dismiss with prejudice to
24 enforce the Plea Agreement filed on May 18, 2018 that prosecuting him in the RICO
25 Conspiracy case violated his plea agreement in the Original Conspiracy case and
26 therefore the RICO Conspiracy case must be dismissed with prejudice as against MR.
27 CARR.
28

77. MR. CARR filed a second Motion to Dismiss with prejudice on May 18, 2018 on constitutional grounds seeking to dismiss the RICO Indictment against MR. CARR because it violated his rights under the Double Jeopardy Clause and the Due Process Clause of the Fifth Amendment.

78. On the date the UNITED STATES' objections to Judge Hoffman's R&R recommending that the RICO Indictment against MR. CARR were due to be filed, the UNITED STATES filed a Motion to Dismiss Criminal Indictment Pursuant to Federal Rule of Criminal Procedure 48(a) and Judge Navarro signed the order dismissing the case against MR. CARR without prejudice and closed the case on October 5, 2018.

79. This second motion to dismiss on constitutional grounds was still pending when the RICO Indictment was dismissed against MR. CARR.

80. MR. CARR was thereafter released from custody on or about October 7, 2018 after serving fifteen (15) months in federal custody.

81. The harassment and abuse of MR. CARR at the hands of the GOVERNMENT DEFENDANTS took place from June 14, 2017 until October 5, 2018, the day the UNITED STATES finally dismissed the indictment against MR. CARR and his ordeal with the DEFENDANTS finally concluded when he was released from custody on or about October 7, 2018.

FIRST CAUSE OF ACTION
(False Arrest and Imprisonment in Violation of Fifth Amendment)
Plaintiff's *Bivens* Claim Against the Government Defendants

82. MR. CARR realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

83. The GOVERNMENT DEFENDANTS' approval of and return of the True Bill in the RICO Superseding Indictment against MR. CARR and the other Defendants knowing that Mr. Rudnick had recanted before he testified before the Grand Jury in

1 California and knowing that KARPEL had continual and substantial involvement in
2 directing the investigation and developing the witness testimony that ultimately led
3 to Mr. CARR being charged in the RICO Superseding Indictment with an overt act
4 being the alleged murder in Sparks, Nevada in *United States v. Palafox, et. al.*, 2:16-
5 cr-265-GMN-CWH [ECF No. 13] as alleged in detail in the Statement of Facts caused
6 MR. CARR significant pain and suffering by depriving him of his liberty absent due
7 process of law.
8

9 84. When, as KARPEL did here, “prosecutors abandon the confines of their
10 offices and assume the role of an investigator, they are exposed to the same liability
11 which attaches to any officer or investigator for performing that investigative
12 function.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 273-74 (1993) (“A prosecutor’s
13 administrative duties and those investigatory functions that do not relate to an
14 advocate’s preparation for the initiation of a prosecution or for judicial proceedings
15 are not entitled to absolute immunity.”); *Burns v. Reed*, 500 U.S. 478, 494-496 (1991).
16

17 85. The GOVERNMENT DEFENDANTS’ approval of and return of the True
18 Bill in the RICO Indictment against MR. CARR knowing that the UNITED STATES
19 had agreed in a Plea Agreement with MR. CARR in the Original Conspiracy “not to
20 bring any additional charges against the defendant [MR. CARR] arising out of the
21 investigation in the District of Nevada that culminated in this Plea Agreement and
22 based on conduct known to the United States except that the United States reserves
23 the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C.
24 16” prior to indicting MR. CARR on June 14, 2017 caused MR. CARR significant pain
25 and suffering by depriving him of his liberty absent due process of law and subjecting
26 him to Double Jeopardy by charging him with a RICO conspiracy for the same overt
27 acts that he pled guilty to and was incarcerated for in the Original Conspiracy after
28 the UNITED STATES promised MR. CARR that no additional charges would be

1 brought against him except for a crime of violence under section 16 knowing that the
2 RICO conspiracy was not a crime of violence under section 16.

3 86. MR. CARR has a Fifth Amendment right to be free from false arrest and
4 imprisonment. On information and belief, some or all of the individual
5 GOVERNMENT DEFENDANTS caused and effectuated the Indictment and arrest of
6 MR. CARR knowing of the lies to the Grand Jury, pressure to fabricate the story of the
7 shooting of Mr. Pettigrew by KARPEL in witness interviews with Mr. Rudnick, Mr.
8 Martin, and Mr. Rivera, and the UNITED STATES' promise not to bring additional
9 charges against MR. CARR in the District of Nevada except for a crime of violence
10 under Section 16. With that knowledge, DEFENDANTS collectively arrested and
11 imprisoned MR. CARR for fifteen (15) months.
12

13 87. “[A] criminal defendant has a due process right to enforce the terms of
14 his plea agreement.” *Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir. 2006). When
15 the government indicts a defendant with a new charge that is barred by the plea
16 agreement, the defendant may seek specific performance of the plea agreement by
17 moving to dismiss the new charge. *United States v. Plascencia-Orozco*, 852 F.3d 910,
18 920 (9th Cir. 2017); *see also* Fed. R. Crim. P. 12(b)(1) (“A party may raise by pretrial
19 motion any defense, objection, or request that the court can determine without a trial
20 on the merits.”).
21

22 88. If the new charge breaches the plea agreement, rescission of the plea
23 agreement is not a proper remedy when the defendant has already fulfilled his
24 obligations under the plea agreement—including pleading guilty and serving his
25 sentence—because rescission cannot repair the harm caused by the government’s
26 breach. *Buckley*, 441 F.3d at 699. Rather, the remedy is specific performance, which
27 in the context of MR. CARR’s RICO Conspiracy case means dismissing the new RICO
28 Indictment pursuant to *United States v. Transfiguracion*, 442 F.3d 1222, 1237 (9th

1 Cir. 2006).

2 89. THE DEFENDANTS collectively reindicted and imprisoned MR. CARR
3 for fifteen (15) months until he was able to obtain a R&R from Judge Hoffman
4 recommending that his plea agreement be enforced and recommending that his
5 motion to dismiss with prejudice to enforce plea agreement be granted.
6

7 90. On the date the UNITED STATES' objections to the R&R were due, the
8 UNITED STATES filed a Motion to Dismiss Criminal Indictment Pursuant to Federal
9 Rule of Criminal Procedure 48(a) and Judge Navarro signed the order dismissing the
10 case against MR. CARR without prejudice and closing the case on October 5, 2018.
11 MR. CARR was thereafter released from custody on or about October 7, 2018.

12 91. On information and belief, at all relevant times, some or all of the
13 individual GOVERNMENT DEFENDANTS committed, knew of, and/or acquiesced
14 in all of the above-described acts. The GOVERNMENT DEFENDANTS conduct was
15 done intentionally, with deliberate indifference, negligently, and/or with reckless
16 disregard, of MR. CARR'S rights. By the acts alleged herein, the GOVERNMENT
17 DEFENDANTS conduct has proximately caused harm to MR. CARR.
18

19 92. On information and belief, the actions, orders, authorizations, and other
20 conduct of some or all of the individual GOVERNMENT DEFENDANTS deprived MR.
21 CARR of his right to be free from unlawful arrest and imprisonment and gives rise to
22 a cause of action for damages directly under the Fifth Amendment pursuant to *Bivens*
23 *v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).
24 As a result of the GOVERNMENT DEFENDANTS' actions, MR. CARR suffered
25 damages, including but not limited to, actual damages, humiliation, fear, loss of
26 liberty, and emotional distress.

27 ///

SECOND CAUSE OF ACTION
(Violation of Double Jeopardy Provision and Violation of the Due
Process Clause of Fifth Amendment)
Plaintiff's *Bivens* claim Against the Government Defendants

93. MR. CARR realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

94. The GOVERNMENT DEFENDANTS' approval of and return of the True Bill in the RICO Indictment against MR. CARR knowing that the UNITED STATES had agreed in a Plea Agreement with MR. CARR in the Original Conspiracy "not to bring any additional charges against the defendant [MR. CARR] arising out of the investigation in the District of Nevada that culminated in this Plea Agreement and based on conduct known to the United States except that the United States reserves the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16" prior to indicting MR. CARR on June 14, 2017 caused MR. CARR significant pain and suffering by depriving him of his liberty absent due process of law and subjecting him to Double Jeopardy by charging him with a RICO conspiracy for the same overt acts that he pled guilty to and was incarcerated for in the Original Conspiracy after the UNITED STATES promised MR. CARR that no additional charges would be brought against him except for a crime of violence under section 16 knowing that the RICO conspiracy was not a crime of violence under section 16.

95. The Due Process Clause requires "fair play" in the criminal justice system and protects defendants from fundamentally unfair prosecutorial conduct. *See Betterman v. Montana*, 136 S. Ct. 1609, 1613 (2016) (explaining Due Process Clause exists "as a safeguard against fundamentally unfair prosecutorial conduct"); *Doggett v. United States*, 505 U.S. 647, 666 (1992) (Thomas, J., dissenting) ("[T]he Due Process Clause always protects defendants against fundamentally unfair treatment by

1 the government in criminal proceedings.”); *United States v. American Honda Motor*
2 *Co.*, 273 F. Supp. 810, 819 (N.D. Ill. 1967) (explaining Due Process Clause “is
3 essentially a recognition of the requirement of fundamental fairness and fair play”).

4
5 96. Courts have recognized the unfairness inherent in charging in successive
6 prosecutions offenses arising out of the same transaction; “[t]he government is not a
7 ringmaster for whom individuals and corporations must jump through a hoop at their
8 own expense each time it commands.” *American Honda Motor Co., Inc.*, 273 F. Supp.
9 at 820; see *Adamson v. Ricketts*, 865 F.2d 1011, 1017–20 (9th Cir. 1988) (en banc);
10 *United States v. Martinez*, 785 F.2d 663, 669 (9th Cir. 1986); see also *Abbate v.*
11 *United States*, 359 U.S. 187, 196–201 (1959) (Brennan, J., concurring) (characterizing
12 as “disturbing” government insistence that it be allowed to bring successive
13 prosecutions under different statutes for same set of facts).

14
15 97. In fact, even the government recognizes the potential problems with
16 successive prosecutions and consequently mandates special approval beforehand.
17 See U.S. Attorneys’ Manual § 9-2.031 (Petite policy). Thus, “entirely apart from the
18 double jeopardy provision of the Fifth Amendment,” the Due Process Clause protects
19 MR. CARR from harassment by the government through “successive grand jury
20 inquiries and indictments for alleged separate conspiracies arising out of the same
21 transaction.” *American Honda Motor Co.*, 271 F. Supp. at 987; see *Barnett*, 375 F.2d
22 at 237.

23 98. The UNITED STATES conducted one investigation into one
24 organization, obtaining one conviction against MR. CARR. Not satisfied with MR.
25 CARR’s one-year sentence, the UNITED STATES sought to prosecute MR. CARR a
26 second time for an offense that “aris[es] out of the same nucleus of operative facts as
27 the original charge” and is not a crime of violence under section 16. *United States v.*
28 *Martinez*, 785 F.2d 663, 669 (9th Cir. 1986) (alteration in original) (quoting *United*

1 *States v. Robison*, 644 F.2d 1270, 1272 (9th Cir. 1981)); see *Adamson v. Ricketts*, 865
2 F.2d 1011, 1017–20 (9th Cir. 1988) (en banc), *abrogated on other grounds by Walton*
3 *v. Arizona*, 497 U.S. 639 (1990).

4 99. Both charges allege MR. CARR agreed to promote the goals of the Vagos
5 Motorcycle Club through unlawful activities. Both involve the same places, people,
6 and time. And both rely on the same incident from June 2009—the alleged extortion
7 of a former club member.

8 100. But the charges differed in one significant way: the RICO Conspiracy
9 allowed for a significantly higher sentence than MR. CARR received on the previous
10 conviction. See 18 U.S.C. § 1963; see also *Martinez*, 785 F.2d at 669 (“[I]f [a]
11 prosecutor, faced with a disappointing result, acts so as to ‘up the ante’ for the
12 defendant, the presumption of vindictiveness arises and must be rebutted if the
13 government is to prevail.”). In fact, the UNITED STATES was seeking life in prison
14 in the RICO Conspiracy case.

15 101. There was no indication from the record that the successive prosecutions
16 of MR. CARR resulted from a reasoned prosecutorial decision, as opposed to
17 dissatisfaction with the result of the first proceeding.

18 102. Not only was MR. CARR’s alleged participation in the offense completed
19 four years before he was sentenced for the Original Conspiracy, but several of his
20 current codefendants already had been charged with violating RICO. *Cf. Feliciano v.*
21 *United States*, 914 F. Supp. 776, 781 (D.P.R. 1996) (explaining that prosecutor’s duty
22 of good faith “encompass[es] in certain cases an obligation to inform a defendant
23 during plea bargaining negotiations of other possible criminal charges which may be
24 filed.”), *aff’d sub nom. Rivera-Feliciano v. United States*, 107 F.3d 1 (1st Cir. 1997).
25 The prosecutor’s actions suggest a reasonable likelihood of vindictiveness and
26 harassment and justify liability for violating MR. CARR’s Due Process Rights under
27
28

1 the Fifth Amendment.

2 103. MR. CARR has a Fifth Amendment right to be free from violations of the
3 Double Jeopardy Provision and the Due Process Clause in the Fifth Amendment.

4 104. On information and belief, some or all of the individual GOVERNMENT
5 DEFENDANTS caused and effectuated the arrest of MR. CARR knowing of the
6 UNITED STATES' promise not to bring additional charges against MR. CARR in the
7 District of Nevada except for a crime of violence under section 16 therefore violating
8 his right not to be subjected to violations of the Double Jeopardy provision and the
9 Due Process Clause in the Fifth Amendment.
10

11 105. The GOVERNMENT DEFENDANTS collectively indicted and
12 imprisoned MR. CARR for fifteen (15) months until he was able to obtain a R&R from
13 Judge Hoffman recommending that his plea agreement be enforced and
14 recommending that his motion to dismiss with prejudice to enforce plea agreement
15 be granted.
16

17 106. On the date the UNITED STATES' objections to the R&R were due, the
18 UNITED STATES filed a Motion to Dismiss Criminal Indictment Pursuant to Federal
19 Rule of Criminal Procedure 48(a) and Judge Navarro signed the order dismissing the
20 case against MR. CARR without prejudice and closing the case on October 5, 2018.
21 MR. CARR was thereafter released from custody on or about October 7, 2018.

22 107. On information and belief, at all relevant times, some or all of the
23 individual GOVERNMENT DEFENDANTS committed, knew of, and/or acquiesced
24 in all of the above-described acts. The GOVERNMENT DEFENDANTS' conduct was
25 done intentionally, with deliberate indifference, negligently, and/or with reckless
26 disregard, of MR. CARR's rights. By the acts alleged herein, the GOVERNMENT
27 DEFENDANTS' conduct has proximately caused harm to MR. CARR.
28

108. On information and belief, the actions, orders, authorizations, and other conduct of some or all of the individual GOVERNMENT DEFENDANTS deprived MR. CARR of his right to be free from double jeopardy and gives rise to a cause of action for damages directly under the Fifth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As a result of the GOVERNMENT DEFENDANTS' actions, MR. CARR suffered damages, including but not limited to, actual damages, humiliation, fear, loss of liberty, and emotional distress.

THIRD CAUSE OF ACTION
(Violation of the Eighth Amendment)
Plaintiff's *Bivens* claim Against the Government Defendants

109. MR. CARR realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

110. The GOVERNMENT DEFENDANTS' approval of and return of the True Bill in the RICO Superseding Indictment against MR. CARR and the other Defendants knowing that Mr. Rudnick had recanted before he testified before the Grand Jury in California and knowing that KARPEL had continual and substantial involvement in directing the investigation and developing the witness testimony that ultimately led to Mr. CARR being charged in the RICO Superseding Indictment with an overt act being the alleged murder in Sparks, Nevada in *United States v. Palafox, et. al.*, 2:16-cr-265-GMN-CWH [ECF No. 13] as alleged in detail in the Statement of Facts caused MR. CARR significant pain and suffering and caused MR. CARR severe psychological harm, constituting cruel and unusual punishment in violation of MR. CARR'S rights under the Eighth Amendment to the United States Constitution.

111. The actions of the GOVERNMENT DEFENDANTS in bringing this RICO Indictment against MR. CARR after the UNITED STATES promised to bring no

1 additional charges against MR. CARR in the District of Nevada except for a crime of
2 violence under section 16 caused severe psychological harm, constituting cruel and
3 unusual punishment in violation of MR. CARR'S rights under the Eighth Amendment
4 to the United States Constitution.

5
6 112. The GOVERNMENT DEFENDANTS violated MR. CARR's constitutional
7 rights by indicting him based on fabricated evidence and violated his plea agreement
8 in the Kane case and committed false imprisonment and malicious prosecution of
9 MR. CARR (i.e., without due process of law and in violation of the Double Jeopardy
10 Clause of the Fifth Amendment) and deprived MR. CARR of his life, liberty and,
11 property rights, which constitutes cruel and unusual punishment in contravention to
12 the Eighth Amendment to the United States Constitution.

13 113. As a direct, proximate and, foreseeable cause of the GOVERNMENT
14 DEFENDANTS' egregious conduct, performed in their individual capacities, MR.
15 CARR'S Eighth Amendment Constitutional rights, under *Bivens*, were deprived and,
16 therefore, MR. CARR is entitled to monetary damages for his injuries, including,
17 without limitation: compensatory damages for the impairment of his reputation;
18 personal humiliation; mental anguish and suffering; mental and emotional distress;
19 financial harm; and the loss of gainful employment, including, without limitation, and
20 future impairment for MR. CARR'S chosen profession.
21

22 **FOURTH CAUSE OF ACTION**
23 **Conspiracy to Deprive Equal Protection and Due Process Rights**
24 **(42 U.S.C. § 1985(3))**
25 **Plaintiff's *Bivens* claim Against the Government Defendants**

26 114. MR. CARR realleges and incorporates by reference each and every
27 allegation in the preceding paragraphs as if fully set forth herein.

28 115. Upon information and belief some or all of the GOVERNMENT

1 DEFENDANTS entered into an agreement to act in concert for the purpose of
2 preventing MR. CARR'S from re-entry into society upon his release from the Bureau
3 of Prisons after his incarceration on the *Kane* case, and brought a RICO Indictment
4 against him for a felony RICO Conspiracy based on fabricated evidence as described
5 in the Statement of Facts; thereby depriving MR. CARR of the equal protection of the
6 laws. The conspiracy included, but was not limited to, an agreement to reindict,
7 detain, interrogate, and arrest MR. CARR in furtherance of the plan and scheme to
8 secure a second felony conviction against him for RICO conspiracy and cause him to
9 be subjected to possible sentence of life in prison based on fabricated evidence.

11 116. "[A] criminal defendant has a due process right to enforce the terms of
12 his plea agreement." *Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir. 2006). When
13 the government indicts a defendant with a new charge that is barred by the plea
14 agreement, the defendant may seek specific performance of the plea agreement by
15 moving to dismiss the new charge. *United States v. Plascencia-Orozco*, 852 F.3d 910,
16 920 (9th Cir. 2017); *see also* Fed. R. Crim. P. 12(b)(1) ("A party may raise by pretrial
17 motion any defense, objection, or request that the court can determine without a trial
18 on the merits."). If the new charge breaches the plea agreement, rescission of the plea
19 agreement is not a proper remedy when the defendant has already fulfilled his
20 obligations under the plea agreement—including pleading guilty and serving his
21 sentence—because rescission cannot repair the harm caused by the government's
22 breach. *Buckley*, 441 F.3d at 699. Rather, the remedy is specific performance, which
23 means in this context dismissing the new charge. *United States v. Transfiguracion*,
24 442 F.3d 1222, 1237 (9th Cir. 2006).

26 117. The Due Process Clause requires "fair play" in the criminal justice system
27 and protects defendants from fundamentally unfair prosecutorial conduct. *See*
28 *Betterman v. Montana*, 136 S. Ct. 1609, 1613 (2016) (explaining Due Process Clause

1 exists “as a safeguard against fundamentally unfair prosecutorial conduct”); *Doggett*
2 *v. United States*, 505 U.S. 647, 666 (1992) (Thomas, J., dissenting) (“[T]he Due
3 Process Clause always protects defendants against fundamentally unfair treatment by
4 the government in criminal proceedings.”); *United States v. American Honda Motor*
5 *Co.*, 273 F. Supp. 810, 819 (N.D. Ill. 1967) (explaining Due Process Clause “is
6 essentially a recognition of the requirement of fundamental fairness and fair play”).
7

8 118. The GOVERNMENT DEFENDANTS performed several acts in
9 furtherance of this conspiracy, including, but not limited to, securing the RICO
10 Superseding Indictment against MR. CARR based on fabricated evidence as described
11 in the Statement of Facts, securing the RICO Superseding Indictment against MR.
12 CARR after promising not to bring any additional charges against him except a crime
13 of violence under section 16 that this RICO Conspiracy was not, violating MR. CARR’s
14 Double Jeopardy and Due Process rights and rights under the Fifth Amendment,
15 falsely arresting and imprisoning MR. CARR, maliciously prosecuting MR. CARR,
16 and engaging in abuse of process until MR. CARR was successful in obtaining a R&R
17 from Judge Hoffman recommending that his plea agreement be enforced and
18 recommending that his motion to dismiss with prejudice to enforce plea agreement
19 be granted and thereafter having the RICO Indictment against his dismissed without
20 prejudice when the UNITED STATES filed a Motion to Dismiss Criminal Indictment
21 Pursuant to Federal Rule of Criminal Procedure 48(a) and Judge Navarro signed the
22 order dismissing the case against MR. CARR and closing the case on October 5, 2018.
23 MR. CARR was thereafter released from custody on or about October 7, 2018.
24

25 119. The GOVERNMENT DEFENDANTS’ actions were not justified under the
26 facts and circumstances of the Original Conspiracy and RICO Conspiracy that arose
27 out of the same Operation Pure Luck and therefore the absence of justification by the
28 GOVERNMENT DEFENDANTS is above contestation under the totality of the

1 circumstances presented in MR. CARR's case.

2 120. The GOVERNMENT DEFENDANTS' plan and scheme, and the overt
3 acts were taken in furtherance of their conspiracy.

4 121. The conspiracy in this matter was aided and furthered by the DOJ, the
5 USAONV, and AFT, in concert with the GOVERNMENT DEFENDANTS to fabricate
6 evidence to secure the RICO Superseding Indictment.

7 122. The amendment to Title 42, United States Code, Section 1988 provides
8 attorney's fees in actions under Title 42, United States Code, Section 1985. Attorneys'
9 fees are sought in this Complaint and should be awarded accordingly.

10 123. As a result of the conspiracy between and amongst the GOVERNMENT
11 DEFENDANTS, and the overt actions taken in furtherance thereof, MR. CARR
12 suffered damages, including but not limited to, actual damages, loss of liberty,
13 humiliation, fear, and emotional distress.

14 15 16 **Federal Tort Claims Act ("FTCA") – General Allegations**

17 124. Pursuant to Title 28, United States Code, Section 1346(b), "federal
18 district courts have jurisdiction over a certain category of claims for which the
19 [UNITED STATES] has waived its sovereign immunity and 'render[ed]' itself liable,"
20 including, without limitation, "claims that are: [1] against the United States, [2] for
21 money damages, . . . [3] for injury or loss of property, or personal injury or death [4]
22 caused by the negligent or wrongful act or omission of any employee of the
23 Government [5] while acting within the scope of his office or employment, [6] under
24 circumstances where the United States, if a private person, would be liable to the
25 claimant in accordance with the law of the place where the act or omission occurred."
26 *F.D.I.C. v. Meyer*, 510 U.S. 471, 477 (1994) (quoting 28 U.S.C. § 1346(b)).
27
28

1 125. “A claim comes within this jurisdictional grant – and thus is ‘cognizable’
2 under § 1346(b) – if it is actionable under § 1346(b). And a claim is actionable under
3 § 1346(b) if it alleges the six elements outlined above.” *Id.* (citing *Loeffler v. Frank*,
4 486 U.S. 549 (1988)).

5 126. The FTCA, Title 28, United States Code, Section 2671 et seq., is the
6 exclusive remedy for tort actions against a Federal agency (28 U.S.C. § 2679(a)) and
7 against Federal employees who commit torts while acting within the scope and course
8 of their employment (28 U.S.C. § 2679(b)(1)).

9 127. At all times relevant herein, the GOVERNMENT DEFENDANTS, and
10 any and all unnamed employees of the DOJ, the USAONV, and ATF were acting within
11 the scope and course of their employment within the DOJ, were acting as agents of
12 Defendant UNITED STATES, and were acting as DOJ Attorneys, Assistant United
13 States Attorneys, and investigative and/or law enforcement officers. The
14 aforementioned GOVERNMENT DEFENDANTS performed acts in their individual
15 capacities for which said GOVERNMENT DEFENDANTS are, and remain, personally
16 liable.
17

18 128. With regard to the GOVERNMENT DEFENDANTS’ tortious conduct
19 that was performed while they were “acting within the scope of [their official] office[s]
20 or employment at the time of the incident out of which the [MR. CARR’S] claim[s]
21 arose,” Defendant UNITED STATES is solely liable for that conduct as mandated by
22 Title 28, United States Code, Section 2679(d)(2)) and the Federal Employees Liability
23 Reform & Tort Compensation Act of 1988 (“Westfall Act”).
24

25 129. Similarly, MR. CARR’S exclusive remedy for his tort-based claims
26 against the GOVERNMENT DEFENDANTS’ employer is this claim against the
27 UNITED STATES pursuant to Title 28, United States Code, Section 2679(a).
28

1 130. To that end, Title 28, United States Code, Section 2680(h) expressly
2 provides that the UNITED STATES is also liable for certain intentional torts that are
3 based on the “acts or omissions” of an “investigative or law enforcement officer” and
4 include “[a]ny claim arising out of ... false imprisonment, false arrest, [and] malicious
5 prosecution” *Millbrook v. United States*, 569 U.S. 50, 52 (2013) (citing 28 U.S.C. §
6 2680(h); see also *Levin v. United States*, 568 U.S. 503 (2013)). The DOJ, the
7 USAONV, and ATF are agencies of the government of the United States of America.
8 The Law Enforcement Proviso, inserted into Subsection 2680(h), directs “that, with
9 regard to acts or omissions of investigative or law enforcement officers of the United
10 States Government,” the general waiver of sovereign immunity in the FTCA “applies
11 to any claim arising . . . out of assault, battery, false imprisonment, false arrest, abuse
12 of process, or malicious prosecution.”
13

14 131. Here, MR. CARR has valid tort claims arising out of, related to and
15 connected with the GOVERNMENT DEFENDANTS’ tortious conduct that was
16 performed in their individual capacities as detailed in the Statement of Facts.
17 Defendant UNITED STATES is liable for the acts of the GOVERNMENT
18 DEFENDANTS pursuant to the doctrine of *respondeat superior* as recognized by the
19 Ninth Circuit Court of Appeals in *Xue Lu v. Powell*, 621 F.3d 944 (9th Cir. 2010).
20 Defendant UNITED STATES, if a private person, would be liable to the MR. CARR for
21 the acts and omissions of its employees and agents described herein under the law of
22 the place where said acts and omissions occurred, including, without limitation, the
23 following claims:
24

25 ///

26 ///

27 ///

FIFTH CAUSE OF ACTION
(False Arrest - FTCA)
Plaintiff's Claim Against Defendant UNITED STATES

132. MR. CARR realleges and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

133. The GOVERNMENT DEFENDANTS effected an unlawful arrest of MR. CARR.

134. The GOVERNMENT DEFENDANTS falsely arrested MR. CARR on the RICO Conspiracy case based on fabricated evidence elicited by KARPEL.

135. The GOVERNMENT DEFENDANTS' approval of and return of the True Bill in the RICO Superseding Indictment against MR. CARR and the other Defendants knowing that Mr. Rudnick had recanted before he testified before the Grand Jury in California and knowing that KARPEL had continual and substantial involvement in directing the investigation and developing the witness testimony that ultimately led to Mr. CARR being charged in the RICO Superseding Indictment with an overt act being the alleged murder in Sparks, Nevada in *United States v. Palafox, et. al.*, 2:16-cr-265-GMN-CWH [ECF No. 13] as alleged in detail in the Statement of Facts caused MR. CARR significant pain and suffering by depriving him of his liberty absent due process of law.

136. The GOVERNMENT DEFENDANTS' approval of and return of the True Bill in the RICO Superseding Indictment against MR. CARR knowing that the UNITED STATES had agreed in a Plea Agreement with MR. CARR in the Original Conspiracy case "not to bring any additional charges against the defendant [MR. CARR] arising out of the investigation in the District of Nevada that culminated in this Plea Agreement and based on conduct known to the United States except that the United States reserves the right to prosecute the defendant for any crime of violence

1 as defined by 18 U.S.C. 16” prior to indicting MR. CARR on June 14, 2017 caused MR.
2 CARR significant pain and suffering by depriving him of his liberty absent due process
3 of law and subjecting him to Double Jeopardy by charging him with a RICO
4 conspiracy for the same overt acts that he pled guilty to and was incarcerated for in
5 the Original Conspiracy case after the UNITED STATES promised MR. CARR that no
6 additional charges would be brought against him except for a crime of violence under
7 section 16 knowing that the RICO conspiracy was not a crime of violence under section
8 16.
9

10 137. The Law Enforcement Proviso, inserted into Subsection 2680(h), directs
11 “that, with regard to acts or omissions of investigative or law enforcement officers of
12 the United States Government,” the general waiver of sovereign immunity in the
13 FTCA “applies to any claim arising . . . out of assault, battery, false imprisonment,
14 false arrest, abuse of process, or malicious prosecution.” False arrest is derivative tort
15 stemming from false imprisonment and the Law Enforcement Proviso would cover
16 this cause of action.
17

18 138. As a direct, proximate and foreseeable cause of the GOVERNMENT
19 DEFENDANTS’ tortious acts related to the effectuation of the unlawful arrest of MR.
20 CARR based on fabricated evidence and in violation of his plea agreement and these
21 acts performed in their official capacity, scope, and employment, the UNITED
22 STATES is, and remains, liable; MR. CARR suffered damages as hereinafter set forth.
23

24 **SIXTH CAUSE OF ACTION**
25 **(False Imprisonment - FTCA)**
26 **Plaintiff’s Claim Against Defendant UNITED STATES**

27 139. MR. CARR realleges and incorporates by reference each and every
28 allegation in the preceding paragraphs as if fully set forth herein.

1 140. In Nevada, “[f]alse imprisonment is an unlawful violation of the personal
2 liberty of another, and consists in confinement or detention without legal sufficient
3 authority.” Nev. Rev. Stat. § 200.460. “To establish false imprisonment of which false
4 arrest is an integral part, it is . . . necessary to prove that the person be restrained of
5 his liberty under probable imminence of force without any legal cause or
6 justification.” *Jones*, 2011 WL 13305450 at *3 (quoting *Hernandez v. City of Reno*,
7 634 P.2d 668, 671 (Nev. 1981). “Thus, ‘an actor is subject to liability to another for
8 false imprisonment ‘if (a) he acts intending to confine the other . . . within the
9 boundaries fixed by the actor, and (b) his act directly or indirectly results in a
10 confinement of the other, and (c) the other is conscious of the confinement or is
11 harmed by it.’” *Id.* (quoting Restatement (Second) of Torts § 35 (1965)).

12
13 141. MR. CARR, here, affirmatively alleges that he was unlawfully arrested
14 based on fabricated evidence used to secure the RICO Superseding Indictment after
15 being released on the Original Conspiracy case, and MR. CARR was subsequently
16 imprisoned and forced into custody by Defendant UNITED STATES for fifteen (15)
17 months, mostly at a sweltering federal private contractor prison in Pahrump, Nevada
18 which is also an ICE detention facility. Upon completion of the fifteen months of
19 prison, MR. CARR was released upon filing two motions to dismiss wherein he was
20 able to obtain a R&R from Judge Hoffman recommending that his plea agreement be
21 enforced and recommending that his motion to dismiss with prejudice to enforce plea
22 agreement be granted.

23
24 142. On the date the UNITED STATES’ objections to the R&R were due, the
25 UNITED STATES filed a Motion to Dismiss Criminal Indictment Pursuant to Federal
26 Rule of Criminal Procedure 48(a) and Judge Navarro signed the order dismissing the
27 case against MR. CARR without prejudice and closing the case on October 5, 2018.
28 MR. CARR was thereafter released from custody on or about October 7, 2018.

reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation.” *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 886 (Nev. 1999).

149. The conduct of the GOVERNMENT DEFENDANTS, as set forth herein, was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society. The GOVERNMENT DEFENDANTS committed these extreme and outrageous acts with the intent to reindict MR. CARR and inflict severe and mental and emotional distress upon MR. CARR.

150. As a proximate result of the GOVERNMENT DEFENDANTS' willful, intentional and malicious conduct, MR. CARR suffered severe and extreme emotional distress. Specifically, MR. CARR suffered and/or continues to suffer from the following physical manifestations of emotional distress: sleep disturbances, anxiety, nightmares, and other ailments. Therefore, MR. CARR is entitled to an award of damages as against DEFENDANT UNITED STATES. MR. CARR has also suffered general damages as hereinafter set forth and is entitled to compensation therefor.

EIGHTH CAUSE OF ACTION
(Malicious and Vindictive Prosecution - FTCA)
Plaintiff's Claim Against Defendant UNITED STATES

151. MR. CARR realleges and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

152. In Nevada, “[a] person who maliciously and without probable cause therefor, causes or attempts to cause another person to be arrested or proceeded against for any crime of which that person is innocent” is liable for malicious prosecution. Nev. Rev. Stat. § 199.310. In this regard, to state a claim for malicious prosecution under Nevada law, a Plaintiff must allege: “(1) that the defendant lacked

1 probable cause to initiate a prosecution; (2) malice; (3) the prior criminal proceedings
2 were terminated in his favor; and (4) Plaintiff suffered damages.” *Anderson v. United*
3 *States*, 2019 WL 6357256 at *2 (D. Nev. 2019) (quoting *LaMantia v. Redisi*, 118 Nev.
4 27, 30, 38 P.3d 877, 879 (Nev. 2002).

5
6 153. The Due Process Clause requires “fair play” in the criminal justice system
7 and protects defendants from fundamentally unfair prosecutorial conduct. See
8 *Betterman v. Montana*, 136 S. Ct. 1609, 1613 (2016) (explaining Due Process Clause
9 exists “as a safeguard against fundamentally unfair prosecutorial conduct”); *Doggett*
10 *v. United States*, 505 U.S. 647, 666 (1992) (Thomas, J., dissenting) (“[T]he Due
11 Process Clause always protects defendants against fundamentally unfair treatment by
12 the government in criminal proceedings.”); *United States v. American Honda Motor*
13 *Co.*, 273 F. Supp. 810, 819 (N.D. Ill. 1967) (explaining Due Process Clause “is
14 essentially a recognition of the requirement of fundamental fairness and fair play”).

15
16 154. Courts have recognized the unfairness inherent in fabricating evidence
17 to secure an Indictment and charging in successive prosecutions offenses arising out
18 of the same transaction; “[t]he government is not a ringmaster for whom individuals
19 and corporations must jump through a hoop at their own expense each time it
20 commands.” *American Honda Motor Co., Inc.*, 273 F. Supp. at 820; see *Adamson v.*
21 *Ricketts*, 865 F.2d 1011, 1017–20 (9th Cir. 1988) (en banc); *United States v. Martinez*,
22 785 F.2d 663, 669 (9th Cir. 1986); see also *Abbate v. United States*, 359 U.S. 187,
23 196–201 (1959) (Brennan, J., concurring) (characterizing as “disturbing” government
24 insistence that it be allowed to bring successive prosecutions under different statutes
25 for same set of facts).

26
27 155. In fact, even the government recognizes the potential problems with
28 successive prosecutions and consequently mandates special approval beforehand.
See U.S. Attorneys’ Manual § 9-2.031 (Petite policy). Thus, “entirely apart from the

1 Double Jeopardy provision of the Fifth Amendment,” the Due Process Clause protects
2 MR. CARR from harassment by the government through “successive grand jury
3 inquiries and indictments for alleged separate conspiracies arising out of the same
4 transaction.” *American Honda Motor Co.*, 271 F. Supp. at 987; *see Barnett*, 375 F.2d
5 at 237.
6

7 156. The UNITED STATES and the GOVERNMENT DEFENDANTS
8 conducted one investigation into one organization, obtaining one conviction against
9 MR. CARR. Not satisfied with MR. CARR’s one-year sentence, the UNITED STATES
10 sought to prosecute MR. CARR a second time for an offense that “aris[es] out of the
11 same nucleus of operative facts as the original charge.” *United States v. Martinez*,
12 785 F.2d 663, 669 (9th Cir. 1986) (alteration in original) (quoting *United States v.*
13 *Robison*, 644 F.2d 1270, 1272 (9th Cir. 1981)); *see Adamson v. Ricketts*, 865 F.2d 1011,
14 1017–20 (9th Cir. 1988) (en banc), *abrogated on other grounds by Walton v.*
15 *Arizona*, 497 U.S. 639 (1990).
16

17 157. Both charges allege MR. CARR agreed to promote the goals of the Vagos
18 Motorcycle Club through unlawful activities. Both involve the same places, people,
19 and time. And both rely on the same incident from June 2009—the alleged extortion
20 of a former club member.

21 158. But the charges differed in one significant way: the RICO Conspiracy
22 allowed for a significantly higher sentence than MR. CARR received on the previous
23 conviction and was based on fabricated evidence that KARPEL assisted in obtaining
24 through intimidation and anger. *See* 18 U.S.C. § 1963; *see also Martinez*, 785 F.2d at
25 669 (“[I]f [a] prosecutor, faced with a disappointing result, acts so as to ‘up the ante’
26 for the defendant, the presumption of vindictiveness arises and must be rebutted if
27 the government is to prevail.”). In fact, the UNITED STATES was seeking life in
28 prison in the RICO Conspiracy case.

1 159. There was no indication from the record that the successive prosecutions
2 of MR. CARR resulted from a reasoned prosecutorial decision, as opposed to
3 dissatisfaction with the result of the first proceeding.

4 160. Not only was MR. CARR's alleged participation in the offense completed
5 four years before he was sentenced for the Original Conspiracy, but several of his
6 current codefendants already had been charged with violating RICO. *Cf. Feliciano v.*
7 *United States*, 914 F. Supp. 776, 781 (D.P.R. 1996) (explaining that prosecutor's duty
8 of good faith "encompass[es] in certain cases an obligation to inform a defendant
9 during plea bargaining negotiations of other possible criminal charges which may be
10 filed."), *aff'd sub nom. Rivera-Feliciano v. United States*, 107 F.3d 1 (1st Cir. 1997).
11 The prosecutor's actions suggest a reasonable likelihood of vindictiveness and
12 harassment and justify liability for violating MR. CARR's Due Process Rights under
13 the Fifth Amendment and therefore the GOVERNMENT DEFENDANTS are liable to
14 MR. CARR.
15

16 161. MR. CARR here affirmatively alleges that the GOVERNMENT
17 DEFENDANTS' misleading and material representations that MR. CARR could be
18 charged again relating to the same overt acts that he previously pled guilty to and
19 upon information and belief fabrication of evidence and misleading statements of
20 facts by witnesses to obtain the Grand Jury RICO Superseding Indictment evidences
21 the absence of probable cause, along with the malicious intent of the GOVERNMENT
22 DEFENDANTS.
23

24 162. MR. CARR further alleges that the UNITED STATES' dismissal of the
25 RICO Indictment against MR. CARR, coupled the District Court's R&R
26 recommending dismissal of the case for a violation of MR. CARR'S plea agreement in
27 the Original Conspiracy, and the ultimate acquittals of the Defendants in Group No. 1
28 after trial and ultimate dismissal of all remaining Defendants in the RICO Conspiracy

1 Superseding Indictment unequivocally establishes that the underlying action was
2 terminated in MR. CARR'S favor.

3 163. The Law Enforcement Proviso, inserted into Subsection 2680(h), directs
4 "that, with regard to acts or omissions of investigative or law enforcement officers of
5 the United States Government," the general waiver of sovereign immunity in the
6 FTCA "applies to any claim arising . . . out of assault, battery, false imprisonment,
7 false arrest, abuse of process, or malicious prosecution."
8

9 164. As a direct and proximate result of the conduct set forth in this
10 Complaint, MR. CARR suffered severe emotional distress, pain and suffering,
11 humiliation, physical injuries, loss of community and reputation, lost business
12 opportunities, lost profits, other damages, and actual and special damages to MR.
13 CARR.

14 165. MR. CARR is entitled to punitive damages in an amount to be proven at
15 trial as the actions of the DEFENDANTS named in this claim for relief are
16 characterized by fraud, were committed by each of them knowingly, willfully, and
17 maliciously with the intent to harm injure, vex, harass, and oppress MR. CARR was
18 callous and done in wanton and reckless disregard of the MR. CARR'S rights. MR.
19 CARR has also suffered damages as hereinafter set forth.
20

21 **NINTH CAUSE OF ACTION**
22 **(Abuse of Process - FTCA)**
23 **Plaintiff's Claim Against Defendant UNITED STATES**

24 166. MR. CARR realleges and incorporates by reference each and every
25 allegation in the preceding paragraphs as if fully set forth herein.

26 167. In Nevada, an abuse of process claim has two fundamental elements: (1)
27 an ulterior purpose, and (2) a willful act in the use of the process not proper in the
28 regular conduct of a proceeding. *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 114 Nev.

1 823, 843, 963 P.2d 465, 478 (1998). The action for abuse of process hinges on the
2 misuse of regularly-issued process. *Nevada Credit Rating Bureau, Inc. v. Williams*,
3 88 Nev. 601, 606, 503 P.2d 9 (1972).

4 168. The GOVERNMENT DEFENDANTS' approval of and return of the True
5 Bill in the RICO Superseding Indictment against MR. CARR and the other Defendants
6 knowing that Mr. Rudnick had recanted before he testified before the Grand Jury in
7 California and knowing that KARPEL had continual and substantial involvement in
8 directing the investigation and developing the witness testimony that ultimately led
9 to MR. CARR being charged in the RICO Superseding Indictment with an overt act
10 being the alleged murder in Sparks, Nevada in *United States v. Palafox, et. al.*, 2:16-
11 cr-265-GMN-CWH [ECF No. 13] as alleged in detail in the Statement of Facts caused
12 MR. CARR significant pain and suffering by depriving him of his liberty absent due
13 process of law.
14

15 169. MR. CARR here affirmatively alleges that the GOVERNMENT
16 DEFENDANTS' misleading and material representations that MR. CARR could be
17 charged again relating to the same overt acts that he previously pled guilty to and
18 upon information and belief fabrication of evidence and misleading statements of
19 facts by witnesses to obtain the Grand Jury RICO Indictment evidences the absence
20 of probable cause, along with the malicious intent of the GOVERNMENT
21 DEFENDANTS.
22

23 170. All of these actions reflect conduct that is unconscionable and falls well
24 below the standard of behavior to be expected of agents and/or employees who
25 represent Defendant UNITED STATES.

26 171. The UNITED STATES' frivolous argument that the RICO conspiracy was
27 a crime of violence under section 16 was misguided and unsupportable as a matter of
28 law and fact and issued only to harass and subject MR. CARR to further restraints

1 upon his liberty, and accordingly, the RICO Indictment of MR. CARR in the RICO
2 Conspiracy case was an abuse of process.

3 172. This RICO Indictment of MR. CARR in the RICO Conspiracy case in
4 violation of MR. CARR'S due process rights, rights under the Double Jeopardy Clause,
5 and promises in his Plea Agreement in the Original Conspiracy case show a
6 disconcerting pattern of abuse of process as the legally issued process was being used
7 for the purposes of harassment and further detainment which is a purpose other than
8 that which it was designed by law to accomplish.

9 173. The GOVERNMENT DEFENDANTS' abuse of process continues to the
10 present day. MR. CARR filed a properly timed motion to dismiss that was granted by
11 R&R by Judge Hoffman and the UNITED STATES thereafter dismissed the RICO
12 Indictment against MR. CARR in response to the R&R on October 5, 2018.

13 174. The Law Enforcement Proviso, inserted into Subsection 2680(h), directs
14 "that, with regard to acts or omissions of investigative or law enforcement officers of
15 the United States Government," the general waiver of sovereign immunity in the
16 FTCA "applies to any claim arising . . . out of assault, battery, false imprisonment,
17 false arrest, abuse of process, or malicious prosecution."
18

19 175. As a direct and proximate result of the conduct set forth in this
20 Complaint, MR. CARR suffered severe emotional distress, pain and suffering,
21 humiliation, physical injuries, loss of community and reputation, lost business
22 opportunities, lost profits, other damages, and actual and special damages to MR.
23 CARR.
24

25 ///

26 ///

27 ///

TENTH CAUSE OF ACTION
(Negligence - FTCA)
Plaintiff's Claim Against Defendant UNITED STATES

176. MR. CARR realleges and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

177. At all times herein mentioned, DEFENDANTS, were subject to a duty of care to avoid causing unnecessary distress to persons through their making of arrests. The GOVERNMENT DEFENDANTS were responsible for conducting themselves in compliance with federal state and local laws, the United States Constitution, and the Code of Conduct for Judicial Employees. The GOVERNMENT DEFENDANTS breached their duty in this regard in all material respects by eliciting fabricated evidence to secure the Superseding RICO Indictment, arresting MR. CARR, and commencing an illegal prosecution of MR. CARR. The wrongful conduct of the GOVERNMENT DEFENDANTS, as set forth herein, did not comply with the standard of care to be exercised by reasonable persons, proximately causing MR. CARR to suffer injuries and damages.

178. As a proximate result of the GOVERNMENT DEFENDANTS' negligent conduct, MR. CARR suffered severe physical injury, severe emotional and mental distress, and injury having a traumatic effect on the MR. CARR'S emotional tranquility, and damages should ensue.

PRAYER FOR RELIEF

WHEREFORE, MR. CARR prays that this Court enter a judgment in his favor and against the DEFENDANTS as follows:

1. Enter a declaratory judgment that DEFENDANTS violated MR. CARR'S rights under the U.S. Constitution and civil rights laws;
2. Award MR. CARR his nominal and actual damages;

8. Grant such further relief as this Court deems just and appropriate.

DATED this 5th day of February 2021.

Melanie A. Hill

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